

THE BALLER HERBST LAW GROUP

A PROFESSIONAL CORPORATION

www.Baller.com

***WASHINGTON
OFFICE
2014 P Street, NW
Suite 200
Washington, DC 20036
(202) 833-5300
(202) 833-1180 (FAX)***

***MINNEAPOLIS OFFICE
377N Grain Exchange
Building
301 Fourth Street South
Minneapolis, MN 55415
(612) 339-2026
(612) 339-4789 (FAX)***

October 11, 2006

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte; *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Protection and Competition Act of 1992*, MB docket No. 05-311.

Dear Ms. Dortch,

On October 10, 2006, Peter Collins of the City of Geneva, IL, on behalf of certain Illinois municipalities, and Jim Baller, Adrian Herbst and Casey Lide of the Baller Herbst Law Group, met with the following officials of the FCC: Jessica Rosenworcel of the Office of Commissioner Copps, Ian Dillner of the Office of Commissioner Tate, Heather Dixon of the Office of Chairman Martin, Christina Pauze of the Office of Commissioner McDowell, and Rudy Brioche of the Office of Commissioner Adelstein. We also met with several staff members of the Media Bureau, including Rosemary Harold, Mary Beth Murphy, John Norton and Holly Saurer.

The substance of the meetings concerned the recent *ex parte* filing of Illinois Municipalities in the above-referenced dockets, as summarized in the attached document, a copy of which was also provided to meeting participants.

/s/ E. Casey Lide
The Baller Herbst Law Group

October 10, 2006

Summary of *Ex Parte* Comments of Illinois Municipalities¹

*In the Matter of Implementation of Section 621(a)(1)
of the Cable Communications Policy Act of 1984...*,
MB Docket No. 05-311

- Cities and towns across the U.S. – and the Illinois Municipalities in particular – are eager to obtain local broadband competition as rapidly as possible.
- Deployment of AT&T Lightspeed, which requires the construction of numerous large, above-ground boxes² (at least one for every 300 homes served), has serious implications for land use, the public right-of-way, public safety, aesthetics, and convenience. Existing local regulations did not envision the arbitrary placement of a large number of utility boxes throughout the community. AT&T has not been forthcoming about the extent of Lightspeed's impact or its plans for Lightspeed facilities deployment in particular localities. Nor has AT&T been willing to work cooperatively with local governments with regard to assessing and mitigating its adverse impact on the public right of way.
- In addition, the State of Illinois has a “level playing field” law, to which the Illinois Municipalities are subject. The Municipalities are obligated under state law to ensure that new video service providers are subject to comparable conditions as existing providers. While claiming that it intends to provide video services of a type functionally identical to existing cable operators, AT&T has refused to apply for local video franchises as required under federal and Illinois law. This places the localities in an untenable position: if the Illinois Municipalities permitted AT&T to enter the market on its unilateral terms, the Municipalities undoubtedly would be sued by Comcast on the basis of a violation of Illinois’ level playing field law.
- In light of the conflicting interests and the novelty of the issues presented, the Municipalities enacted temporary moratoria to enable reasonable deliberation and crafting of a proper response. The moratoria did *not* preclude AT&T's filing of permit applications, continuing engineering work, or taking other steps that would facilitate prompt approval of Lightspeed permits when the moratoria ended. AT&T, however, immediately ceased all such activity, filed lawsuits against the Illinois Municipalities, and submitted an *ex parte* letter to the Commission on May 24.
- In its letter to the Commission of May 24, 2006, AT&T stated that the Illinois Municipalities are conspiring to thwart AT&T's deployment of Lightspeed. Painting

¹ This document summarizes more extensive *ex parte* comments filed with the Commission on August 18, 2006. The following Illinois municipalities join in these comments: City of Geneva, City of North Aurora, City of Wheaton, City of Wood Dale, Village of Carpentersville, Village of Itasca, and the Village of Roselle.

² Videos and photographs of these facilities are available at http://www.fostercity.org/community_info/telecom/ATT-Project-Lightspeed-Site-Visits.cfm.

the Illinois Municipalities' actions as an example of local franchise obstructionism, AT&T insists that the Commission should take action to preempt the actions of the localities.

- Illinois Municipalities are here today to correct the record, to keep the Commission apprised of AT&T's conduct, and to urge the Commission to recognize the very important role of local right-of-way administration and cable franchising.